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Addendum

Contribution by the United Nations Observer Mission in El Salvador

I. INTRODUCTION

1. As Mr. Boutros Boutros-Ghali, Secretary-General of the United Nations, has said, the United Nations Observer Mission in El Salvador (ONUSAL) marks the start of a new generation of peace-keeping operations. It is an unprecedented experiment for the United Nations system in which the Organization is using its good offices to resolve an internal conflict and has assumed responsibility for verifying all the commitments entered into by the parties, including monitoring the situation of human rights in the country with a view to their protection and promotion.

2. ONUSAL is thus an integrated operation which, at the request of the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN), is responsible for actively verifying the attainment of the four objectives that the parties have set for the peace restoration process: ending the armed conflict through political negotiations; consolidating living conditions and democratic institutions; establishing guarantees of unrestricted respect for human rights; and reuniting and reconciling Salvadorian society. These aims of the peace process are set out in the Geneva Agreement signed by the two parties under United Nations auspices on 4 April 1990. 1/

3. The fact that the Geneva Agreement recognized and formally established unrestricted respect for human rights as a basic and substantive component of the peace process reflects the understanding of the Government of El Salvador and FMLN regarding the interrelationship that exists between the ending of the armed conflict, the consolidation of democracy and respect for the human rights of the population. This position does not assimilate peace with the elimination of the armed conflict. On the contrary, it denotes a rational and politically legitimate attitude recognizing that the achievement of peace is structurally linked to the adoption of a complex series of undertakings, constitutional and institutional reforms and the adjustment of individual and social conduct, with a view to replacing the culture of violence created by 11 years of armed conflict by a culture of human rights.

4. The conclusion of peace accords in El Salvador was a long and difficult process which culminated on 16 January 1991 with the signature of the El Salvador Peace Agreement in Mexico City. 2/

5. This Agreement, incorporating the advances made by previous commitments, 3/ laid down a set of agreements in various areas of El Salvador's national life with the aim of achieving the peace objectives agreed upon in Geneva. The main ones were the following:

(a) Cessation of the armed conflict over a period beginning on 1 February 1991 and ending on 15 December 1992. 4/ The cease-fire was conceived not only as the conclusion of military operations but also as a comprehensive agreement which, in addition to the cease-fire as such, involved the separation of forces, the disbandment of FMLN's military structure and the reintegration of its members into the civil, economic, political and institutional life of the country, including the distribution of land to the former combatants.

(b) The realization of substantive changes in the conception, structure and functions of the armed forces. These include their reduction, a process of purging entrusted to an ad hoc Commission, the elaboration of a new military doctrine defining security as "a broader concept based on unrestricted respect for the individual and social rights of the person", 5/ the establishment of a new system of instruction, the disbandment of the rapid deployment infantry battalions established during the anti-subversive struggle, and the creation of the National Civil Police, a new civil force independent from the armed forces and responsible for public security.

(c) Improvement of the judicial system through the enactment of new laws regulating the National Council of the Judiciary, the Judicial Training School, the Office of the National Counsel for the Defence of Human Rights, the judicial profession and the reform of the Code of Military Justice, the latter with the aim of excluding offences committed by civilians from military jurisdiction.

6. In order to verify all these commitments, whose implementation was set out in a precise timetable, the Security Council decided, on 20 May 1991 (resolution 693 of 20 May 1991), to establish, under its authority, the United Nations Observer Mission in El Salvador (ONUSAL) as an integrated peace-keeping operation. The Secretary-General of the United Nations

appointed Ambassador Iqbal Riza as Chief of Mission and his Special Representative. The Mission began its work on 26 July 1991 by verifying compliance with the San José Agreement on Human Rights. Subsequently, the Security Council, in resolution 729 of 14 January 1992 decided to expand ONUSAL activities, in accordance with its initial conception of an integrated operation, establishing the military observer and police observer divisions.

7. The Human Rights Division, with its first Director, Mr. Philippe Texier, was established as the first component of the Mission, as a special measure recommended by the Secretary-General and authorized by the Security Council for special reasons and at the parties' request. However, since the beginning of the negotiations between the Government of El Salvador and FMLN, the intention has been for the United Nations to conduct the comprehensive verification of all the political agreements signed by both parties following the end of the armed conflict.

8. This report aims at presenting ONUSAL activities in the field of active verification of human rights, as an unprecedented mechanism in the United Nations system. In this connection, besides referring to the positive impact of the peace agreements on the situation in El Salvador, it analyses methodological and procedural aspects of active verification and attempts to assess its implementation in the case of El Salvador.

II. THE HUMAN RIGHTS SITUATION IN EL SALVADOR BEFORE THE ESTABLISHMENT OF ONUSAL

1. The implementation of Commission on Human Rights protection and promotion mechanisms in El Salvador

9. Since the beginning of the 1980s, Salvadorian society has been embroiled in an internal conflict which has set successive Governments at odds with the insurgent forces of FMLN. Independently of the causes and subsequent development of the internal conflict, the violence in El Salvador gradually worsened due to increasing violations of the rules of humanitarian law, and especially through systematic violations of human rights.

10. In 1980, at its thirty-fifth session, the United Nations General Assembly for the first time included in its work an analysis of human rights in El Salvador. Through resolution 35/192 of 15 December 1980, the General Assembly, inter alia, expressed its deep concern at the grave violations of human rights and fundamental freedoms in El Salvador, especially murders, disappearances, torture and arbitrary detentions, which had been promptly reported by the non-governmental organizations (NGOs).

11. Subsequently, the Commission on Human Rights appointed Mr. José Antonio Pastor Ridruejo as Special Representative for the case of El Salvador. His reports, the resolutions of the Commission on Human Rights and the decisions adopted by the Third Committee of the United Nations General Assembly exerted throughout this period moral and political pressure which helped to prevent a further deterioration of the human rights situation in El Salvador.

12. Of particular importance in this process was the implementation of the public procedure of the Commission on Human Rights, including the active

participation of the NGOs, the member Governments of the Commission and the Commission's subsidiary bodies.

13. This involvement of Commission on Human Rights mechanisms in the situation in El Salvador throughout the past decade made it possible to demand the application of the provisions of international humanitarian law to the parties in conflict, specifically article 3 common to the Geneva Conventions of 12 August 1949 (E/CN.4/1502) and Protocol II. The Commission also systematically called for an end to the armed conflict and the restoration of peace through dialogue and peaceful negotiation.

2. The human rights situation in El Salvador as of 1990

14. Despite the lack of mechanisms for ongoing action in the field that would make it possible, with the consent of the parties, directly to influence the development of the situation, the action of the Commission on Human Rights was quite effective in limiting negative trends in the human rights situation in El Salvador and ensuring the Government's progressive adoption of a number of measures aimed at permitting greater international supervision and a decrease in specific systematic practices. At the same time, appropriate international conditions for promoting dialogue between the parties were being established.

15. The NGOs, especially those based in El Salvador, made a substantial contribution to this process. Another decisive factor was the growing concern and commitment on the part of the States Members of the United Nations and the Commission on Human Rights, which became increasingly involved in exercising the responsibilities required of the international community by the international human rights instruments. In this connection, international action on the human rights situation in El Salvador was helped by the dynamic participation of the Latin American countries, first by the Contadora and support groups and later by the Mechanism for Consultation and Concerted Political Action (Rio Group). A decisive motivating factor was the joint action of the Latin American countries in promoting the Esquipulas Agreement, as a frame of reference for solving the internal conflicts in the region.

16. Notwithstanding all these efforts and those made by the parties in conflict to improve human rights standards in El Salvador, the situation which the ONUSAL Observer Mission found when it began its activities was characterized by the persistence of the armed conflict and of serious, systematic and massive violations of human rights. The war had produced thousands of victims and the violence had led to a widespread lack of respect for life and human dignity and lack of public confidence in the law and the political, judicial and social institutions. The very foundations of the rule of law were being called in question.

III. THE EL SALVADOR PEACE AGREEMENTS AND THE ESTABLISHMENT OF ONUSAL

17. The agreements that constitute the political and legal framework for the peace process in El Salvador were signed successively in the course of a prolonged process of negotiation. After the general objectives of the negotiations had been established in the Geneva Agreement (4 April 1990), and while conditions were being created for the signature of the substantive

agreements relating to the cease-fire, the democratic reforms of the Constitution of the Republic and the reorganization of the country's institutions, the Government of El Salvador and FMLN - with the good offices of the Secretary-General of the United Nations - signed the San José Agreement on Human Rights in San José, Costa Rica, on 26 July 1990. This Agreement, which represented the first substantive political understanding between the parties in the process of arranging civil peace, embodied undertakings to ensure the observance and safeguarding of human rights and to submit them to a broad process of international verification by the United Nations.

18. It contained a commitment to take immediately all necessary steps and measures to avoid any act or practice which constitutes an attempt upon the life, integrity, security or freedom of the individual and to eliminate any practice involving enforced disappearances and abductions. At the same time agreement was reached on a set of immediate measures to ensure the full guarantee of the freedom and the integrity of the person.

19. The Agreement provided that all these measures would be the subject of active verification by a United Nations human rights verification mission, which was given the following terms of reference:

(a) To investigate the human rights situation in El Salvador as regards acts committed or situations existing as from the date of its establishment and to take any steps it deems appropriate to promote and defend such rights;

(b) To devote special attention to the observance of the rights to life, to the integrity and security of the person, to due process of law, to personal liberty, to freedom of expression and to freedom of association;

(c) To clarify any situation which appears to reveal the systematic practice of human rights violations and to recommend appropriate measures for the elimination of the practice to the party concerned.

20. For the fulfilment of this mandate, the San José Agreement gave the verification mission a broad range of specific powers. They include the power to: verify the observance of human rights; receive communications from any individual, group of individuals or body containing reports of human rights violations; visit any place or establishment freely and without prior notice; hold its meetings freely anywhere in the national territory; interview freely and privately any individual, group of individuals or members of bodies or institutions; collect by any means it deems appropriate such information as it considers relevant; make recommendations to the parties on the basis of any conclusions it has reached with respect to cases or situations it may have been called upon to consider; and report regularly to the Secretary-General of the United Nations and through him to the General Assembly.

21. Although the terms of reference set in the San José Agreement were broad in scope, it contained in its preamble a working definition of human rights which extended still further the legal framework for the verification mission's activities. It widened it to cover the provisions on human rights contained in the Salvadorian legal system, including international treaties to which El Salvador is a party, and to the rules of international humanitarian

law and the declarations and principles on human rights adopted by the United Nations and the Organization of American States.

22. Because of their nature, the obligations contained in the San José Agreement were and are primarily binding on the Salvadorian State. At the same time, the section of the Agreement on respect for and guarantee of human rights sets forth the commitment of FMLN to respect the inherent attributes of the human person.

23. The signature of the other peace agreements after the San José Agreement extended the scope of active verification to other human rights commitments, and in particular those relating to reforms of the judiciary, the formulation of a new military doctrine, the restructuring of the armed forces instruction system and the formation of the National Civil Police. In each and every one of these commitments a conceptual and normative link is established with the need to assert human dignity and promote respect for human rights.

24. The verification mission was scheduled to start work as soon as the armed conflict ceased. In practice, as already stated (see para. 6), the process of active verification was brought forward at the request of the parties, and ONUSAL had to confront the problems involved in starting its mission in the middle of the armed conflict, when it had originally been intended and scheduled to take place after a cease-fire had been established.

25. This fact entailed an additional effort to bring the terms of reference into line with the situations governed by humanitarian law and to organize activities in the field, giving priority to combat areas.

IV. THE HUMAN RIGHTS DIVISION AS A MECHANISM FOR THE PROTECTION AND VERIFICATION OF HUMAN RIGHTS

26. ONUSAL embarked upon its work by verifying only the San José Agreement, despite the fact that the original intention of the negotiated arrangement was that verification should cover all agreements simultaneously. At the present time, ONUSAL, as an integrated peace-keeping operation, is performing its work on the basis of three functional units, namely, the Human Rights Division, the Military Division and the Police Division. There is also the Office of the Chief of Mission, which is directly responsible for the political aspects of the agreements and general evaluation of the process. Yet notwithstanding the specific nature of the mandate of each element, the Mission's unitary nature, which is inherent in its peace-keeping responsibilities, entails interrelated activities.

27. However, owing to the special nature of human rights verification which implies the evaluation of specific cases and situations on their merit, the Human Rights Division enjoys a special status giving it considerable autonomy both in theory as well as in practice. ONUSAL is unique in that, first, it possesses a comprehensive mandate set out in an ad hoc instrument, namely, the San José Agreement. Secondly, this Agreement empowers the Director of the Human Rights Division to transmit periodic reports direct to the Secretary-General and, through him, to the General Assembly.

28. This considerable degree of autonomy in the context of an integrated mission goes a long way in explaining why the Division can be regarded as a permanent active verification mechanism, since it provides the Director with the necessary degree of authority and autonomy to be able to take action in a sphere as sensitive as that of human rights, and in this way highlights his position as an interlocutor for the parties concerned, NGOs and the other bodies involved, both internally and externally, with a view to the promotion and protection of human rights.

29. At the same time, the integrated nature of the peace-keeping operation enables the verification mission to fulfil its general mandate in a consistent and uniform manner. This is the function of the Chief of Mission who, being responsible for the administration of ONUSAL is therefore also responsible for the establishment of general policy and the overall evaluation of all aspects of the Mission's work. In this way, the activities of the three Divisions can be coordinated in a systematic and continuing fashion with a view to ensuring the coherent and orderly fulfilment of their mandates.

30. In the absence of any precedents at the time of its establishment, the Division had to resolve a number of basic problems. First, it had to develop systematic criteria and operational categories which, in the context of clearly-established priorities, defined the scope of active verification. And secondly, it had to decide upon the modalities of its establishment in various regions of the country and arrange its functional organization.

31. This process was neither easy nor smooth. On the contrary, the Division had to deal with various extremely complex situations, particularly because what the population wanted did not always correspond strictly to the mandate. In the face of stark reality, therefore, a flexible approach had to be adopted in which priorities and methods were adapted to developments to the extent that the peace agreements and active verification were yielding results.

32. Nevertheless, it was possible, in a continuing and permanent manner, to arrive at an operational definition of active verification comprising the following phases: (a) receipt of the complaint or determination of the violation, (b) observation and investigation, and (c) recommendations and good offices. Active verification of this kind takes matters well beyond the complaint proper and is not confined to establishment of the facts, since it implies active powers of inquiry or investigation, the formulation of recommendations and action.

33. Similarly, the operational definitions of cases, in the sense of acts likely to constitute violations of human rights, as well as of situations in the sense of numerous violations of rights of the same kind that can reveal the systematic violation of human rights, have ensured basic continuity both in on-the-spot verification as well as in the analysis of human rights developments in El Salvador.

34. These definitions, which were drawn up when the Mission embarked upon its work, did not, however, prevent the gradual emergence of problems due to a lack of uniform criteria for classifying violations in various regions of the country. This difficulty, which stemmed from the large number of criteria used, also arose in connection with the classification of complaints and of

the rights violated. All these various factors in turn gave rise to difficulties in the compilation of statistics and, consequently, in the interpretation of trends reflecting the situation at both the national and regional levels.

35. Starting in November 1992, following the appointment of Mr. Diego García-Sayán as Director of the Human Rights Division, and based on the experience acquired during the previous period, the Division drew up methodological guidelines intended to base active verification on a more suitable methodology which, among other things, ensured the use of the uniform criteria and concepts that were obviously necessary. Stricter and more selective criteria for the admissibility of complaints were accordingly drawn up. At the same time, various categories of rights and situations were defined on a more technical basis. Lastly, uniform categories of analysis were drawn up for follow-up purposes, the closure of cases and investigation on own initiative. All this was based on the clear realization that active verification was obviously a multifarious activity which comprises ONUSAL's power to take action, even in the absence of any complaint, in cases of major violations.

36. These methodological adjustments are bringing the verification process more into line with reality, ensuring the more effective use of human and administrative resources and the compilation of statistics that are more indicative of the actual situation as regards the enjoyment of human rights.

37. From the standpoint of functional organization, the Division has established a presence throughout the national territory. It has a Central Team which is responsible for carrying out and monitoring the execution of the Division's mandate and for active verification work.

38. The Central Team consists of the administrative cell (Director, Deputy-Director and Principal Adviser) and four working units: Verification, Administration of Justice and Institutional Consolidation, Public Relations and Analysis.

39. The Director draws up the Division's general policy and programmes of work. He directs, supervises and evaluates the Central Team's work as a whole. The Deputy-Director is responsible for the general coordination of the division, including liaison with the regional offices. He is also responsible for administrative and personnel matters, as well as any other specific matters assigned to him. The Principal Adviser provides the Director with advice, coordinates and draws up reports, coordinates the analysis of information and prepares the results for dissemination to third parties and the public.

40. The Verification Unit is responsible for the verification of cases and situations that affect or threaten human rights in the light of the priorities established in this respect. Its functions therefore include the preparation and transmission, from time to time, of instructions to the regional offices and the preparation of the corresponding reports, including statistical information. It is also responsible for the selection of relevant cases and ensuring that they are handled expeditiously.

41. The main purpose of the Administration of Justice and Institutional Consolidation Unit is to support the judiciary and the National Counsel for the Defence of Human Rights, for which it carries out technical cooperation programmes, ensures institutional coordination and promotes various publications to this end. It coordinates activities with the National Police and other State bodies with a view to dealing adequately with the problem of minor offences. It also coordinates relations with lawyers and law students.

42. The Public Relations Unit is responsible for coordinating and organizing the dissemination of material to the media, in cooperation with the Office of Public Information, and for planning and coordinating the formal and informal education programme. It provides support to NGOs in close cooperation with the Verification Unit. Moreover, it coordinates its dissemination and education activities with various sectors and, in particular, coordinates and provides training in democratic principles for the armed forces and the police.

43. The Analysis Unit collects and processes information obtained through verification and from other units of the Mission concerning human rights violations, violence and crime. It is supplied with information originating in other units, other divisions and the media, and prepares a fortnightly report that describes and explains the situation and indicates trends.

44. Operational and decentralized activities are centred on four regional offices in San Salvador (central region), San Vicente (paracentral region), San Miguel (eastern region) and Santa Ana (western region) and two branch offices in Chalatenango and Usulután.

45. The staff of the regional offices is multidisciplinary and comprises human rights observers, legal officers, political officers, and military and political personnel. They are headed by regional coordinators who represent the Chief of Mission in the various regions. Practical experience has demonstrated the importance of police observers in an active verification role, especially for the purpose of examining information concerning the complaints received.

46. Since the work of active verification in cases and situations is of a substantive nature, the population, as well as the nature of the peace agreements and the multisectoral context in which human rights violations occur, demand that priority should be given to verification of legislative modifications of the judicial system, the reorientation of military doctrine and training and the training of the new National Civil Police.

V. EXECUTION OF THE HUMAN RIGHTS MANDATE

47. ONUSAL's activities can be broken down into four different phases: 6/ a preparatory phase covering the period from its establishment on 26 July 1991 up to October 1991; a second phase of execution of the mandate in the circumstances of a continuing armed conflict, which ran until February 1992; a third phase covering active verification during the period which included the cease-fire, up to October 1992; and a final period in which the activities of the Human Rights Division were carried on against a background of the emergence of substantive problems, which led to the need to introduce some

adjustments extending until 15 December 1992 the term of the cease-fire period.

48. During the preparatory phase it undertook two priority tasks with a view to creating the most appropriate conditions for starting active verification activities. In the first place, it was necessary to clarify the scope of the mission in relation to international humanitarian law, in view of the fact that the process of observation had to be carried on in the middle of an armed conflict. The situation called for the effects of the conflict on the civilian population to be verified. That entailed determining the scope of the provisions of the San José Agreement and the limits on their implementation.

49. It was decided to verify cases of international humanitarian law in relation to humane treatment and protection of the civilian population from the ravages of the conflict. This decision was made on the basis of a systematic interpretation of the San José Agreement, which, by referring in its working definition of human rights to the rules of international humanitarian law, indicated that the mission was not without power to verify and even investigate cases or situations related to the armed conflict. Both the reference to international humanitarian law made in the preamble to the San José Agreement and paragraph 18 of the Agreement - which authorizes concurrent application of the mission's procedures with other international machinery for the promotion and protection of human rights - support the view that the presence of the International Committee of the Red Cross (ICRC) is complementary to the mission's work, on the assumption that what is at stake is the minimum standard of protection for the human person. 7/

50. Subsequent experience confirmed this overall perception of ONUSAL's mandate, as regards both substantive aspects and compatibility with ICRC activities.

51. Once they had established the working procedures and the conceptual framework for verification activities, the staff of the Division grve priority to establishing smooth contacts with their national counterparts, both in the Government and in FMLN. Levels of initial coordination were established with NGOs, and various procedures were worked out for their participation in the initial phase of active verification. At the same time, a thorough study was made of the country's legal system so as to be sure of having the legal security arrangements necessary in order to start receiving complaints.

52. From 1 October 1991, after the preparatory work had been completed, the activities of the Human Rights Division entered the second phase, which was characterized by the systematic start of active verification.

53. To that end a set of operational guidelines was drawn up and approved on 1 October 1991, with a view to establishing the functions and competence of the Human Rights Division and determining the scope of active verification, setting out its basic procedures.

54. The complaints received were classified according to whether the violation related to the right to life, integrity and security of the person (summary executions, death threats, enforced and involuntary disappearances,

torture and cruel, inhuman or degrading treatment or punishment), the right to humane treatment (attempts on people's lives), or the situation of the civilian population (attacks on civilians, threats or acts of violence in the context of the armed conflict). Verification of violations by FMLN was restricted to these last two categories, which are proper to international humanitarian law.

55. Over 1,000 complaints were received during this period, many of them related to acts and situations stemming from the armed conflict. Among the cases reported by the Director of the Human Rights Division in his second report (A/46/6/658, para. 54) it was stated, for example, that the Hacienda Vieja Community, Department of Chalatenango, was the target of a military attack carried out between 29 and 31 August 1991 by DM-2 forces from the Department of Cabañas. As a result of ONUSAL's verification, it was found that mortar shells had struck houses in the community.

56. Despite greater alertness by the parties because of the active vigilance that ONUSAL began to display and the atmosphere of relative relaxation that led to the peace negotiations, the human rights situation in this period continued to give grounds for concern. ONUSAL verified many cases of summary executions, arbitrary detentions, enforced or involuntary disappearances, torture and cruel, inhuman or degrading treatment or punishment, and acts or threats of violence.

57. At the same time, the shortcomings of the administration of justice were demonstrated systematically, corroborating the hypothesis that full observance of the right to due process of law is indissolubly linked to the existence of a strong and efficient judicial system meeting the criteria of total independence, objectivity and impartiality.

58. Active verification made it possible to establish, likewise, the persistence of structural situations deriving from the lack of any tradition of the operation of the rule of law, marked by an obvious weakness of institutions and a near breakdown of relations between civilian society and the State. Wide sections of the population had no trust in and did not seek the assistance of the judiciary, the local authorities, the National Police or the rest of the State apparatus because of this hostile relationship marked by fear and intimidation.

59. Throughout this phase, the existence of the armed conflict concentrated a large part of the verification work and ONUSAL's presence in the conflict zones, which helped to open up these zones to the activities of non-governmental organizations.

60. With the unilateral cease-fire declared by FMLN on 16 November 1991 and its subsequent formal entry into force on 1 February 1992, following the signature of the El Salvador Peace Agreement, the objective conditions governing the verification work changed in nature. To this must be added the establishment of the Military and Police Divisions, whose verification work contributed greatly to a sustained and progressive downward trend in cases relating to humane treatment and the negative effects of military actions or movements on the civilian population. Coordination with the Police Division is particularly important because it gives access to technical tools of

investigation which are invaluable for clearing up cases and determining the nature of the facts or situations being verified.

61. The new context, together with ONUSAL's increased capacity to carry out active verification work with greater resources and increased efficiency, could be expected in principle to mean a drastic reduction in military activity and its effect on violation of the human rights of the civilian population. This expectation was fulfilled in practice. At the end of the period, processing of the indicators obtained during active verification revealed an appreciable improvement in the situation. Problems and situations directly linked to the armed conflict were gradually disappearing. The same trend was observed with respect to irregular recruiting by the armed forces and by FMLN. The cease-fire was scrupulously respected by both parties throughout the period, and the numbers of civilian deaths and military casualties recorded were not substantial.

62. At the same time and in contrast to this positive trend in the field of humanitarian law, the human rights situation continued to present a very worrying picture. Despite the fact that active verification in itself involved elements that inhibited or limited the commission of violations, at least with impunity, the overall situation showed only a relative improvement. Summary executions and violent deaths - especially in the departments of San Salvador, La Libertad and Santa Ana - persisted despite the cease-fire. Threats continued to be made against non-governmental organizations, trade unions and political leaders, without the State fulfilling its duty to provide due safeguards.

63. At the same time, ONUSAL was repeatedly disturbed to find that the judicial system was incapable of determining responsibility for serious violations of human rights. This led the Human Rights Division to inform the Government of its profound concern about the administration of justice and its conviction of the need for it to undergo a thorough reform, covering the auxiliary organs, the Government Procurator's Department and the functions of defence counsel. 8/

64. At the beginning of October 1992, the global framework for active verification and for trends in the human rights situation in El Salvador was affected by the emergence of difficulties in meeting the deadlines initially agreed upon for implementation of the peace agreements. This led to a need to revise the timetable and extend the period for fulfilment of the main undertakings (among other things, ending of the cease-fire and of the armed conflict, demobilization of the FMLN forces and their reintegration into the country's economic and political life, distribution of land to those demobilized, purging of the armed forces).

65. Despite this political context, leading at certain moments to a resurgence of tension and intolerant attitudes on the part of isolated groups, which resorted to selective death threats, the result of active verification of human rights cases and situations was a substantial improvement. This had already made it possible in the last months of the previous phase to establish new priorities in the Division's work, giving a prominent place to the right to due process of law. Public hearings were attended and closer relations were established with the judiciary, procurators and judges, with a view to

helping to improve the situation with regard to respect for the rules of due process of law, especially as they applied to extrajudicial confession, administrative detention, holding a person incommunicado, the right to defence in criminal trials, remand in custody and judicial delays.

66. On 15 December 1992, with the end of the armed conflict, in both real and official terms, the execution of the main peace agreements linked with the cease-fire, the purging of the armed forces, and the demobilization and integration of the FMLN forces into democratic life, peace finally became a reality for the Salvadorian people.

67. Thus was achieved one of the objectives of negotiations, as laid down in the Geneva Agreement, namely the cessation of armed conflict. The other objectives relating to the establishment of a standard for the enjoyment of human rights and fundamental freedoms, the consolidation of democratic institutions and the realization of national reconciliation continue to be the subject of active verification by ONUSAL.

68. The Secretary-General of the United Nations, Mr. Boutros Boutros-Ghali, has stated that, in the new phase now beginning with the end of the armed conflict, ONUSAL will continue long-term monitoring of observance of human rights throughout the country, with a view to gradually achieving the objective of ensuring full observance and enjoyment of human rights.

69. In this new phase of active verification against a background of internal peace, the Human Rights Division must respond to the far-reaching changes taking place in Salvadorian society as a result of the peace process.

70. Despite the end of the armed confrontation, a possible increase in individual acts of political violence is foreseeable in the coming months, coinciding with the start of the electoral process leading up to the general elections scheduled for March 1994. Furthermore, the continued existence of arbitrary detention as a systematic practice and the difficulties presented by the number of weapons in civilian hands may create a situation of widespread insecurity.

71. Against this background, the work of active verification will continue, with emphasis on the following priorities:

(a) Active verification in the field as regards situations such as administrative detention, violations of the right to life and personal security, the growing number of cases of people taking the law into their own hands and a complex emerging problem linked with the exercise of the freedom of association, trade-union freedom and the effective exercise of workers' rights;

(b) Support for strengthening the role of the judiciary by democratic and modern reform enabling it gradually to overcome its virtual ineffectiveness;

(c) Promoting in the armed forces proper observance of the provisions of the Constitution and the peace agreements, in particular in connection with the formulation of a new doctrine of democratic security consistent with the

rule of law and respectful of human rights and fundamental freedoms. In addition, this new orientation of the armed forces should be incorporated into their training courses;

(d) Cooperating, to the same end, in the training and activation of the National Civil Police;

(e) Establishing programmes for active cooperation with the National Counsel for the Defence of Human Rights to enable him to fully discharge the functions of monitoring, investigation and protection of human rights conferred on him by the amendments to the Constitution;

(f) Supporting NGOs through mutually complementary action programmes and helping them to achieve greater professionalism in their invaluable work of protecting human rights;

(g) Devising and carrying out mass publicity campaigns on human rights and the right of citizens to insist on full respect for such rights by the State and the judicial authorities.

VI. THE RESULTS OF THE VERIFICATION PROCESS

72. The signature and verification of the various peace agreements have considerably improved objective and subjective conditions for the enjoyment of human rights in El Salvador. From the outset, and as a result of the agreement reached by the Government of El Salvador and FMLN, through the good offices of the United Nations Secretary-General, the parties to the conflict gradually began to eschew acts constituting violations of humanitarian law and human rights. At the same time, the political and social momentum generated by the phase during which the agreements were negotiated, and even more the phase during which they were implemented, helped to instil in the population - albeit in a modest and patchy manner - confidence in the peace process and gradually lessened its fear of the State apparatus.

73. Yet these subjective factors, which were steadily reinforced throughout the national territory by the establishment of the Human Rights Division, could become effective only if real changes could be brought about by the far-reaching modification of the normative structure of the State and society.

74. The constitutional amendments that the parties undertook to make under the Mexico Agreements represented the point of departure for this process. From the standpoint of legality in human rights matters, the constitutional amendments approved by the Legislative Assembly pursuant to the Mexico Agreements strengthened the State's duty to guarantee and protect human rights, altered the role of the armed forces, which became exclusively responsible for national defence matters (and not for the protection of internal order), improved the judicial institutions, created the new National Civil Police, reformed the Supreme Electoral Tribunal, empowered the National Assembly to recommend to the President of the Republic the dismissal of officials, including the chiefs of the Public or State Security Service who had violated human rights, and lastly established the National Counsel for the Defence of Human Rights.

75. These constitutional changes had a favourable influence on the execution of active verification, since the provisions for monitoring legality in respect of human rights contained in the peace agreements and in the international instruments could now be used in conjunction with the monitoring of such legality provided for in the amended Constitution.

76. Generally speaking, the peace agreements thus promoted the creation of objective and subjective conditions conducive to active verification, as a result of greater constitutional control and the positive impact that these developments had on the population and on the institutional life of the country in the sense that they are engendering a less recalcitrant attitude towards State institutions.

1. International humanitarian law

77. An assessment of the impact of active verification on violations of the provisions of international humanitarian law shows that the introduction of the cease-fire and the implementation of active verification of the armed forces, the police and human rights helped to bring about scrupulous and unbroken observance of the cease-fire throughout the long period during which it was in force. In addition, the direct contacts with the parties in connection with the investigation and clarification of violations of the norms of international humanitarian law (particularly with regard to the attempts on life attributed to the armed forces and FMLN, the attacks on the civilian population attributed to both parties, the use or threats of violence in order to intimidate the civilian population, and irregular and forcible conscription) were effective means of gradually reducing and virtually eliminating the violations of humanitarian law even prior to the definitive cease-fire.

78. This was also made possible by the unrestricted access which the opposing parties allowed to ONUSAL observers in all areas of conflict and areas where their forces were concentrated. The practice of holding periodic meetings with human rights officials of both parties also ensured fairly reliable processing of the information on situations relating to humanitarian law. Despite this, difficulties attributable both to the Government and to FMLN arose in dealing with the requests for information necessitated by the task of verification, particularly as regards complaints made by each party, many of which they did not regard as violations of humanitarian law.

2. Human rights

(a) Right to life, to the integrity and security of the person and to personal liberty

79. When the Mission began, there were numerous violations of these rights and although they have declined and are becoming less politically-motivated, they still made up the majority of the violations verified by ONUSAL as of 31 November 1992.

80. Summary executions no longer occur on a serious, systematic and massive scale, although some cases are still being recorded. Enforced disappearances have virtually ceased. Cases of torture have declined

considerably. Verification has shown that when torture has occurred, neither the armed forces nor FMLN were as a rule responsible. Those responsible were in fact unidentified parties, which reinforces the presumption that these were sporadic acts carried out by irregular groups comparable to "death squads". Such acts could become more frequent in the new situation where the electoral contest may give rise to isolated outbreaks of intolerance and violence.

81. Arbitrary and unlawful arrests, particularly those connected with minor offences, are still systematic.

82. The Human Rights Division has confirmed that the provisions of Salvadorian domestic law and of the San José Agreement concerning the right not to be arrested except if ordered by a competent authority in writing and by officers properly identified as such are not yet being generally complied with. In addition, the prohibition on holding people incommunicado is frequently not complied with, nor is the right of detainees immediately to be informed of the reasons for their arrest.

83. In view of the serious effect of this situation on the total number of complaints found admissible, the Human Rights Division recently carried out a simultaneous and comprehensive verification of administrative detentions arising from so-called "minor offences". The results of the verification confirmed that minor offences were the main cause of detention in El Salvador. The sample taken in the course of verification in the bartolinas 9/in a number of selected towns provided confirmation that in the previous three months 10,700 individuals had been detained, an approximate monthly average of 3,500. A projection of this figure at the national level would indicate a likely figure of over 5,000 detentions a month for minor offences.

84. This problem is being given priority attention by ONUSAL, not only because such detentions are being carried out on a large scale but also because in most cases detainees are the victims of arbitrary decisions by which they are deprived of their basic legal rights, as well as being generally ill-treated.

85. Active verification in this sphere has entered a promising phase of good offices and intercession, as the Division has instituted coordination and consultation with the Directorate of the National Police to analyse the results of the verification and to seek means of solving this serious problem in the short and medium terms through the introduction of new regulations and by rectifying practices and conduct at variance with domestic law.

(b) Due process of law

86. From the outset of active verification, the Human Rights Division has laid stress on the importance of the duty of the State as a guarantor in the sphere of human rights. In his third report, the Director of the Human Rights Division drew attention to the obligation of the State to "respect human rights, which imply peremptory abstentions by State organs, and obligations to safeguard or protect human rights, which take the form of what is known as the State's duty to provide safeguards. This is a duty to prevent illegal conduct and, where such conduct occurs, to investigate it, to bring to justice and punish the perpetrators, and to indemnify the victims." 10/

87. As regards the administration of justice in El Salvador, the inadequacy of the judicial bodies in their exercise of the State's duty as guarantor has been and remains notorious. The principal violations of due process of law verified by ONUSAL concern extrajudicial confession, administrative detention, incommunicado detention, the right to defence in criminal proceedings, pre-trial detention, release from prison and delay in the administration of justice.

88. These shortcomings were apparent in the verdicts handed down by the juries in the case of the Jesuits murdered in the early morning of 16 November 1989 on the campus of José Simeón Cañas Central American University. In his second report to the Secretary-General, the Director of the Human Rights Division made the following observations regarding the verdict of the jury which had found guilty two of the six military personnel accused; they summarize the ambivalent manner in which El Salvador's inadequate legal system handled this case, which captured the attention of the whole world.

89. "In the Jesuit case, the jury reached a verdict on 28 September (1991), convicting two of the soldiers on trial and acquitting the remaining seven ... to give a measure of the significance of the trial in the Jesuit case, it must be pointed out that it is without precedent in the functioning of the administration of justice in El Salvador. This is the first time that a public hearing has ended with a jury convicting a high-ranking officer of crimes which constitute serious violations of the human rights of civilians." 11/ The report also drew attention to the difficulty of making an overall analysis of whether the verdict was reasonable, as from another standpoint, "various aspects of the jury's verdict seem problematic. In particular, it is difficult to understand why Yusshy René Mendoza Vallecillos was found guilty only of the death of a minor who died in her mother's arms as a result of the same shots that killer her mother." 12/

90. In accordance with the provisions of the San José Agreement, which gave priority to active verification by ONUSAL of the right to due process of law, the Human Rights Division has largely focused its efforts on this area, especially since the end of the armed conflict. Between August 1991 and May 1992, a total of 357 complaints relating to violations of the right to due process of law were received. Between June and November 1992, 316 complaints were found admissible. Between January and November 1992, complaints relating to due process of law made up an average of almost 27 per cent of the total number of complaints found admissible.

91. ONUSAL has made numerous recommendations for improving the situation. They concern the following areas in particular: ensuring that statements made under threat or any other form of coercion are considered inadmissible; strict compliance with national legislation prohibiting incommunicado detention and regulating the right of defence within 48 hours of arrest or detention; the need for judges fully to comply with legal time-limits for completing the examination stage of criminal proceedings; and lastly, enhancing the independence and autonomy of the Public Prosecutor's Department so that prosecutors are able to play an active role in initiating proceedings and investigations concerning offences.

(c) Freedom of expression

92. In El Salvador freedom of expression is in general effectively enjoyed by citizens and has been consolidated as the rule of law has gained sway with the implementation of the peace agreements. However, concern has been expressed by some sectors of Salvadorian society and within the ONUSAL verification process itself at the repeated publication, during times of tension or difficulties in the implementation of the peace agreements, of paid announcements containing death threats or open encouragement of the use of violence, which run counter to the climate of national reconciliation and reunification necessary in order to consolidate democracy in El Salvador.

(d) Freedom of association

93. Freedom of association is guaranteed by Salvadorian law. However, with armed conflict a thing of the past as a result of the peace process, and as progress has been made towards fully operational democratic institutions, complaints concerning non-observance of trade union freedom have increased, together with repeated instances in which the full exercise of workers' rights has been impeded. Some international organizations such as the International Confederation of Free Trade Unions have informed ONUSAL of their concern about this situation.

94. The San José Agreement and the international human rights commitments to which the Government of El Salvador is a party empower ONUSAL actively to verify the full exercise of trade union freedom and the effective exercise of workers' rights.

95. The El Salvador Peace Agreement made provision for the establishment of a Forum for Economic and Social Consultation, in which the Government, labour and the entrepreneurial sector participate on an equal footing. The Forum has been set up but it is not yet sufficiently active.

96. As from 15 December, when the armed conflict came to an end, complaints concerning trade union freedom and the effective exercise of workers' rights are expected to increase still further. With this in mind, the Human Rights Division has included active verification of trade union freedom and of the exercise of workers' rights among its reformulated priorities.

3. The administration of justice

97. There have traditionally been serious shortcomings in the administration of justice in El Salvador. In 1987, the Centre for the Administration of Justice of Florida International University (FIU) 13/ carried out a diagnosis of the judiciary in El Salvador. Subsequently, the Salvadorian Legislation Review Commission (CORELESAL) performed a similar task through a study of the problems posed by the administration of justice in El Salvador. 14/

98. Both studies concur in drawing attention to the shortcomings in the administration of justice, and highlight a number of lacunae and inadequacies, as well as the excessive number of trials, the inadequate distribution and location of courts and their jurisdiction, the existence of political factors

that undermine the independence and impartiality of the judiciary and, in particular, the problem of immunity from prosecution for manifestly criminal acts which are either not investigated or lead to acquittals.

99. In order to tackle this problem, the peace agreements provided for a number of substantive changes in the judicial system, on which ONUSAL's active verification has focused. These mainly relate to the establishment of the Office of the National Counsel for the Defence of Human Rights, the Act establishing the National Council of the Judiciary and the Judicial Profession Act.

(a) The Office of the National Counsel for the Defence of Human Rights

100. One of the most up-to-date institutions for monitoring compliance with human rights law, with virtual jurisdictional status, is the Office of the Counsel, whose purpose is to receive petitions and complaints from citizens relating to abuse and unlawful acts by the authorities, to provide compensation for violations and to impose legal sanctions when appropriate. The amendments made to the Constitution led to the establishment of this institution to safeguard legality in El Salvador, under the title of the Office of the National Counsel for the Defence of Human Rights. On 27 February 1992, the Legislative Assembly appointed Mr. Carlos Mauricio Molina Fonseca as National Counsel for the Defence of Human Rights.

101. This represents a particularly important institutional step forward, particularly on account of the powers vested in the Office by the Constitution and the Act establishing it. The Office is empowered, inter alia, to investigate, either on its own initiative or subsequent to a complaint, any violations of human rights, and to promote judicial or administrative remedies; it may carry out inspections wherever it deems necessary so as to ensure observance of human rights; it ensures observance of the safeguards relating to due process; it ensures that persons are not detained incommunicado and may submit draft legislation with the aim of furthering human rights in El Salvador.

102. The Office will have a crucial and decisive role to play in the future evolution of human rights in El Salvador. In some respects, when ONUSAL's active verification is completed, the Office will be called upon to perform a similar task, exercising its own powers. However, it is for the time being consolidating its structure and defining procedures and methods of work, although it has initiated a vigorous public information campaign.

103. In connection with active verification subsequent to the restoration of peace, the Human Rights Division of ONUSAL has the capacity to draw up, agree upon and implement, in conjunction with the Office of the National Counsel for the Defence of Human Rights, various programmes to ensure that the Office effectively and efficiently carries out its functions. The various international cooperation agencies and foreign Governments may contribute to this end by providing the essential and vital credit lines as well as technical cooperation. The Office is called upon to play a vital role in the future as the guarantor of human rights in El Salvador. Both the State and society are duty-bound to ensure that the Office is fully able to perform this task.

(b) The National Council of the Judiciary Act

104. On 11 December 1992, in compliance with the peace agreements, the Legislative Assembly adopted the new National Council of the Judiciary Act.

105. The prime functions of the Council are to ensure objectivity and equality of opportunity in the selection of magistrates and judges, judicial personnel and members of the Public Prosecutor's Department; to ensure they receive continuing training; to organize and manage the Judicial Training School; to examine and investigate problems in the judicial sphere; and to ensure that the various organs responsible for the administration of justice operate in a manner consistent with the role of the judiciary in a democratic State subject to the rule of law.

106. However, consideration has not been given to the incorporation into the Council of persons from outside the judicial system and as a result its members do not include representatives of society, as was provided for by the peace agreements.

107. Moreover, the provisions relating to the election of members of the Council by the Legislative Assembly would seem to give insufficient consideration to the provisions of the Constitution which stipulate that the Council is to be wholly independent of both the organs of the State and the political parties.

(c) The new Judicial Profession Act

108. Also in compliance with the peace agreements, the Legislative Assembly has recently approved amendments to the Judicial Profession Act. Pursuant to this Act, responsibility for the administration of the judicial profession lies with the Supreme Court, which is at the summit of the judicial hierarchy, the President of the Court, its division and judges. Like the National Council of the Judiciary Act, the Judicial Profession Act contains a number of lacunae and areas of ambiguity that are not strictly in keeping with the provisions of the Mexico Agreement, which provides for the establishment and organization of machinery to guarantee objectivity in the selection of magistrates and judges, and equality of opportunity for candidates, and requires those appointed to these very important posts to possess suitable professional and legal qualifications.

(d) The functioning of the judiciary

109. Despite the constitutional reforms and the development of legislation through the new Acts intended to modernize the functioning of the judiciary, active verification by the Human Rights Division in this regard has revealed that, notwithstanding the considerable progress made in the area of legislative and institutional reform, the functioning of the judiciary remains manifestly inadequate. The most serious obstacles impeding the establishment of a judicial system qualitatively superior to the previous system are the delays in administration of justice, the rigidity of judicial procedure, the persistence of immunity from prosecution, the politicization of the judiciary, the existence of corruption and the inadequate administrative organization of the judiciary.

110. In view of the persistence of these problems, it would seem advisable, as part of the institutional changes under way in El Salvador, to carry out a thorough functional reform of the judiciary in order to put into practice the progress made at the legislative level, both in the Constitution and in secondary legislation.

4. New military doctrine and training

111. The peace agreements entrusted ONUSAL with the verification of a schedule of commitments concerning the preparation of a new doctrine of military security and training programmes for officers of the armed forces, with a view to consolidating the rule of law and respect for human rights.

112. Thanks to a diversity of contributions by various sectors of society and the involvement of both parties, the commitments have been satisfactorily fulfilled as regards legislation and guidelines.

113. There nevertheless remains the task of consolidating these commitments through the theoretical and practical development of the new doctrine and the formulation of plans and programmes in the various military training centres with a view to providing training that is not only technical and specialized but also based on democratic principles and geared to observance of human rights.

114. There is a fundamental consensus concerning the new role of the armed forces in peacetime under the rule of law. This entails subordination of the armed forces to the civilian authorities, as laid down in the Constitution and the removal of matters of public security from their area of responsibility; public security will be the responsibility of the new National Civil Police.

115. The Human Rights Division has also given priority to this substantive field of active verification by contributing to the reassessment of a new structure for the armed forces within a State subject to the rule of law and with a view to their reconciliation with the civilian population.

5. Education and outreach activities

116. Despite the importance of human rights education and the significance of large-scale outreach campaigns, it is perhaps in this area that the most obvious shortcomings of ONUSAL's active verification may be found. This is undoubtedly attributable to the financial and human resources required by a task of this scope, which, in order to be effective, requires the multifarious involvement of the State and society, as well as international cooperation.

117. Education and outreach activities in the field of human rights must play a vital role in the short term in bringing about reconciliation between the State and society, ensuring effective monitoring of compliance with the law in the sphere of human rights, and ensuring that the population is able to exercise its rights and that the State fulfils its role as guarantor.

VII. EVALUATION OF ACTIVE VERIFICATION AS A MECHANISM FOR THE PROTECTION OF HUMAN RIGHTS

118. The approach adopted by ONUSAL represents a valid option for improving the human rights situation in El Salvador. At the same time, however, it is a universally valid approach in that it represents the institutional development of the protection mechanisms of the United Nations system.

119. Until the Security Council took the decision to establish the verification mission in El Salvador, at the formal request of the parties to the conflict, all United Nations mechanisms and procedures for the protection and promotion of human rights, whatever their specific characteristics, had the following common features: investigation procedures which were not permanent, were not established in the territory of the country which was the subject of international action, were based on the (non-governmental or governmental) communication procedure and had a limited capacity to influence the policies of the State in question by exerting moral, diplomatic or political pressure.

120. Active verification is different in that it involves: a continuous presence, for an adequate length of time, in the territory of the country which is the subject of verification; acceptance by the warring parties of the mission's powers to observe, investigate and make recommendations; imposition of the prevailing situation and protection of human rights on the basis of undertakings sovereignly adopted within the State; and, finally, the capacity to promote meaningful change in the situation on the basis of the undertaking by the parties to accept international verification of compliance with political or legal obligations.

121. These characteristics identify active verification as a new and effective mechanism for the protection of human rights within the United Nations. This approach was made possible in El Salvador by a combination of factors without which it would have been difficult, if not impossible, namely, the sovereign and autonomous decision adopted within the country to call on the good offices of the Secretary-General in negotiating the agreements on peace and human rights protection, together with international verification of its undertakings; and the support of the international community for this request, which endowed the Security Council's decision with the necessary legitimacy.

122. The effective application of this mechanism depends to a large extent, not only on proper organizational orientation and the definition of methodologies and procedures, but also and essentially on the nature of its relations with the parties to the conflict, with NGOs and with the civilian population.

123. ONUSAL's experience in this field may prove useful in planning any future use of a similar mechanism in other national situations of internal conflict or on the basis of a Government's desire for the support of international verification in dealing with gross and systematic violations of human rights.

2. Active verification and ONUSAL's relations with the signatories to the peace agreements

124. From the outset of its activities, the Human Rights Division had to establish good relations both with the Government of El Salvador and with FMLN in order to ensure the existence of three conditions essential for the viability of active verification: (1) preserving and increasing its capacity to hold a dialogue with both parties; (2) scrupulously maintaining neutrality and equilibrium in its activities and in the conduct of its personnel; (3) devising expeditious and pragmatic mechanisms for the exchange of information and consultation.

125. These objectives, which have now been achieved and form part of the smooth relationship between the Human Rights Division and the signatories of the agreements, faced difficulties of various magnitudes at the beginning of the mission.

126. On the one hand, the fact that the San José Agreement was intended to be binding on the State initially gave rise to understandable misgivings on the part of some governmental authorities. On the other hand, the way in which FMLN interpreted the agreements led to a number of situations in which it was thought that the binding nature of its undertaking to apply the standards of humanitarian law and respect for the attributes of the human person might not provide a firm basis for active verification.

127. These two assumptions, which were not consistent with reality, were gradually dispelled. The governmental authorities came to understand the positive aim of active verification and FMLN gradually honoured its undertakings. Since then, the compliance with the agreements by both sides has been the key to the whole active verification process. Apart from the continued occurrence of complex situations, the Salvadorian Government and FMLN have consistently demonstrated their political will in a decisive and transparent manner through their continued cooperation with ONUSAL and through the provision of the guarantees and facilities necessary for active verification operations.

128. These factors have been particularly important in the field, especially in combat areas where the regional coordinators of the Human Rights Division, human rights and police observers, and legal officials perform their tasks in continuous contact with the representatives of the parties and the local authorities. The establishment of this cooperative relationship ensures the smooth contact necessary for active verification, particularly with regard to access to combat areas, military authorities, and police and judicial representatives.

129. This system of cooperation has made it possible to shed light on many situations of human rights violations and to avoid many others with a proper prevention policy.

3. Active verification and ONUSAL's links with non-governmental organizations

130. The NGOs play a decisive role in the national and international protection of human rights. This is true both of the traditional procedures within the Commission on Human Rights and of the less orthodox approach of active verification as part of the peace-keeping operation authorized by the Security Council.

131. In the case of ONUSAL, the San José Agreement itself instructed the Human Rights Division to conduct active verification "in close cooperation with existing human rights organizations and bodies in El Salvador". 15/

132. Cooperation with NGOs to some extent was an accompaniment to the development of active verification operations. In taking up its duties, the Mission adopted various forms of cooperation. A member of the central team was made responsible for relations with NGOs. In the field, the approach tried was to make NGOs responsible for handling complaints and the Human Rights Division for verifying, investigating and making the relevant recommendations.

133. In practice, however, there proved to be a qualitative difference between active verification and the complaints procedure which is an intrinsic part of the work of NGOs. The task of verifying and investigating complaints necessarily assumed a specific methodology for receiving complaints and criteria for determining admissibility or inadmissibility. For these reasons, active verification must be performed entirely by the verifying body, from the initial phase when the complaint is received. The NGOs contributed to this process by accompanying complainants over a considerable period. Coordinated action also enabled NGOs to understand various factors defining their decisive role in the protection of rights. This served to raise levels of confidence. Subsequently, it was no longer necessary for NGOs to accompany complainants, who came to ONUSAL offices on their own initiative; otherwise the human rights observers themselves took the initiative.

134. However, active verification would be impossible without the support of NGOs, either through their reports which provide the basic information for verification, or through their access to the population or their experience with methods and procedures. But basically they represent a critical conscience dedicated to the cause of defending human rights which constitutes an aspiration of society as a whole. The NGOs are thus the dynamic factor of greatest relevance in the international protection of human rights.

135. With the improvement of the human rights situation, complaints will still continue to act as a catalyst, but the activities of NGOs can and must be complemented by action to improve human rights education and monitor the State's fulfilment of its duties as a guarantor, together with other courses of action which must confirm the decisive role of the NGOs in monitoring observance of human rights under the rule of law.

4. Active verification and relations with the civilian population

136. Without the understanding and support of the civilian population, active verification would have no validity as a mechanism for the protection of human rights. At the start of the mission's activities, the majority of the population greeted the presence of the ONUSAL observers with hope, although with some natural apprehension at the lack of adequate information and with a persistent and widespread attitude of fear induced by the armed conflict. This fear was even felt, in the early field operations, by military and police observers, but was rapidly dispelled.

137. Gradually, the civilian population came to view the visits of the ONUSAL observers with trust and as an opportunity to share with them their experience of violations of humanitarian law and human rights. As the complaints and investigation procedures became established, a local and national climate of improved overall protection of the rights of the population developed. This, in turn, was favourable to the dynamic and active participation of the various urban and rural populations in the work of active verification.

138. As the work of active verification developed, the initial reticence of the population began to be replaced by a quite different problem. In many cases, expectations were heightened and regional offices called upon to deal with situations of violence not necessarily related to the exercise of human rights and fundamental freedoms.

139. If the activities of the Human Rights Division have contributed to a demonstrable reduction in human rights violations in El Salvador and to the elimination of violations of international humanitarian law, this is attributable largely and fundamentally to the population's commitment to the peace process and its vigorous participation in active verification.

140. There have been continued reports of isolated acts of specific social groups which, to some extent, have viewed ONUSAL's presence in El Salvador with mistrust or which, in a marginal way, have expressed certain violent tendencies. On repeated occasions, always coinciding with critical junctures in the implementation of the agreements, ONUSAL has received anonymous threats.

141. However, the great majority of the population is participating in a process of which it will itself be the ultimate beneficiary. A recent survey by the Public Opinion Institute of the Central American University (IUDOP) noted this trend, with 70 per cent of the population expressing a positive attitude towards ONUSAL and only 5 per cent expressing negative opinions. 16/ This attitude on the part of the Salvadorian people obviously endows active verification with the social and human legitimacy essential for its success.

VII. FINAL ASSESSMENT

142. Experience of the implementation of the active verification mechanism in El Salvador has been positive. It has contributed to a very considerable reduction in human rights violations, to the end of the armed conflict, to constitutional and legislative reforms which have enhanced the monitoring of

human rights observance in El Salvador, to the strengthening of the democratic institutions, and to the gradual replacement of a climate of fear and apprehension by a human rights climate. There are still human rights situations which give rise to concern in El Salvador, which is why active verification activities have been extended, although the situation is markedly different from that which prevailed before the peace negotiations began.

143. The active verification machinery was put to the test for the first time while the armed conflict was still raging. Methods and procedures have been gradually defined through practice. After almost 15 months of operation, methods of action have been perfected and active verification has become a reliable mechanism capable of effective action in the field.

144. It is not incompatible with, and does not duplicate, the institutional procedures peculiar to the Commission on Human Rights and other bodies within the international system of protection. In fact, it maintains a functional and necessarily complementary relationship with them.

145. The possibility of applying the procedure in other domestic conflicts characterized by a serious deterioration of human rights or in circumstances which require the strengthening of democratic institutions will nevertheless necessitate a sovereign decision by the parties concerned to request international verification.

Notes

1/ ONUSAL, Acuerdos de El Salvador: En el Camino de la Paz (San Salvador, June 1992), p. 1.

2/ See A/46/864 (30 January 1992).

3/ After the signing of the Geneva Agreement, which provided the conceptual framework and programme for the peace process, the parties signed the following successive agreements, also under United Nations auspices: the San José Agreement on Human Rights (26 July 1990); the Mexico Agreements on the armed forces, the judicial system and human rights, the electoral system and the establishment of the Truth Commission (27 April 1991); the New York Agreement, on the establishment of the Comisión Nacional para la Consolidación de la Paz (National Commission for the Consolidation for Peace), the purging and reduction of the armed forces, the elaboration of a new doctrine of the armed forces and the establishment of a new National Civil Police; New York Acts I and II, which oriented the final phase of the negotiations; and the El Salvador Peace Agreement, signed in Chapultepec on 16 January 1992.

4/ The schedule for fulfilment of the peace agreements originally planned for the cease-fire to end on 31 October 1992. Various circumstances made it impossible to meet this deadline. The commitments were adjusted to establish a new deadline for the end of the armed conflict on 15 December.

5/ ONUSAL, Acuerdos de El Salvador: En el Camino de la Paz, June 1992, p. 50.

6/ For a detailed account of ONUSAL's active verification activities, see the reports submitted by the Director of the Human Rights Division to the General Assembly: A/45/1055 (first report, 16 September 1991); A/46/658 (second report, 15 November 1991); A/46/876 (third report, 19 February 1992); A/46/938 (fourth report, 5 June 1992); and A/46/955 (fifth report, 12 August 1992).

7/ See document A/46/658, p.6.

8/ See A/46/658 of 15 November 1991 and A/46/955 of 12 August 1992.

9/ Detention centres under the authority of the police or the municipality.

10/ Third report of the Director of the ONUSAL Human Rights Division (A/46/876, para. 28).

11/ See A/46/658.

12/ Ibid.

13/ See "Diagnosis of the judiciary in El Salvador", FIU, September 1987.

14/ See CORELESAL, "Problematica de la Administración de la Justicia en El Salvador", December 1990.

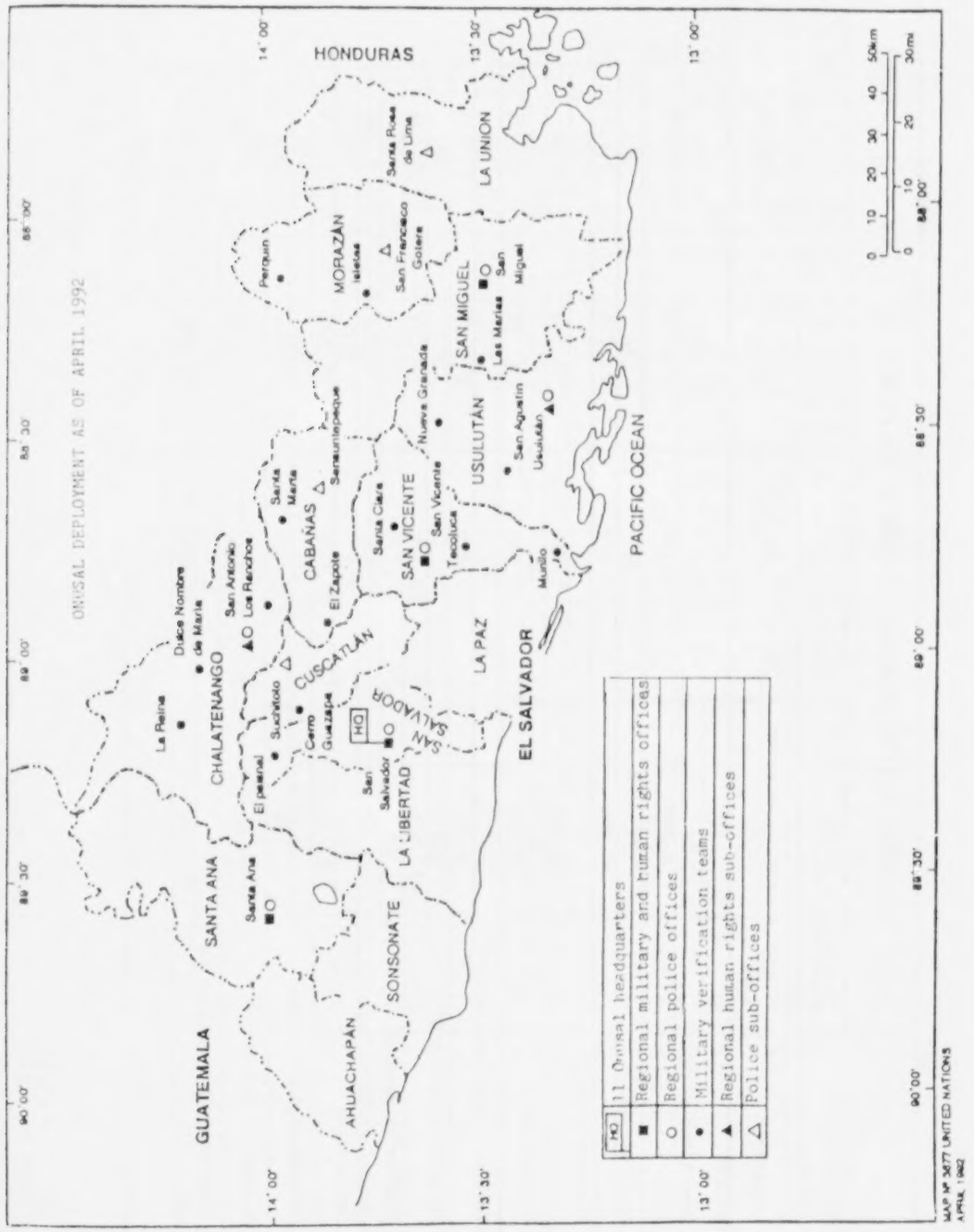
15/ ONUSAL, Acuerdos de El Salvador: En el Camino de la Paz (San Salvador, June 1992), p. 10.

16/ See El Salvador Proceso, weekly report No. 528.

ANNEXES

ANNEX I

ONUSAL DEPLOYMENT AS OF APRIL 1992



ANNEX II

COMPLAINTS ACCEPTED BY ONUSAL, BY TYPE OF VIOLATION

August 1991 - November 1992

Complaints	August - December 1991	January - May 1992	June - November 1992	Total
Executions-deaths	62	105	85	252
	4.94%	9.14%	8.71%	7.46%
Death-threats	79	138	144	361
	6.29%	12.01%	14.75%	10.68%
Disappearances	9	15	15	39
	0.72%	1.31%	1.54%	115%
Kidnappings	49	44	21	114
	3.90%	3.83%	2.15%	3.37%
Torture - Ill-treatment	110	109	167	386
	8.76%	9.49%	17.11%	11.42%
Unlawful detentions	435	261	167	863
	34.66%	22.72%	17.11%	25.53%
Freedom of movement	55	17	5	77
	4.38%	1.48%	0.51%	2.28%
Due process	39	318	316	673
	3.11%	27.68%	32.38%	19.91%
Freedom of association	13	24	30	67
	1.04%	2.09%	3.07%	198%
Freedom of expression	5	15	5	25
	0.40%	1.31%	0.51%	0.74%
International humanitarian law	399	103	21	523
	31.79%	8.96%	2.15%	15.47%
Total	1255	1149	976	3380

ANNEX III

COMPLAINTS ACCEPTED BY ONUSAL, BY CATEGORY OF RIGHT VIOLATED

Violation	June	July	August	September	October	November	Total
Life, Integrity Security	127	97	124	87	94	74	603
%	50.40	44.91	52.10	41.83	48.96	46.25	47.63
Due process	59	52	56	61	52	36	316
%	23.41	24.07	23.53	29.33	27.08	22.50	24.96
Personal liberty	41	41	41	52	33	35	243
%	16.27	18.98	17.23	25	17.19	21.88	19.19
Expression	0	1	0	0	2	1	4
%	0	0.46	0	0	1.04	0.63	0.32
Association	3	10	8	1	6	2	30
%	1.19	4.63	3.36	0.48	3.13	1.25	2.37
Documentation	0	1	0	0	0	1	2
%	0	0.46	0	0	0	0.63	0.16
Other	12	10	8	7	5	5	47
%	4.76	4.63	3.36	3.37	0.60	3.13	3.71
International humanitarian law	10	4	1	0	0	6	21
%	3.97	1.85	0.42	0	0	3.75	1.66
Total	252	216	238	208	192	160	1266

Annex IV

SAN JOSÉ AGREEMENT ON HUMAN RIGHTS*

I. RESPECT FOR AND GUARANTEE OF HUMAN RIGHTS

The Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (hereinafter referred to as "the Parties"),

Bearing in mind that the legal system of El Salvador provides for the recognition of human rights and the duty of the State to respect and guarantee such rights;

Considering also that the State has assumed obligations of this nature under the many international conventions to which it is a party;

Bearing in mind that the Frente Farabundo Martí para la Liberación Nacional has the capacity and the will and assumes the commitment to respect the inherent attributes of the human person;

Reiterating the common purpose, expressed in the Geneva Agreement, to guarantee unrestricted respect for human rights in El Salvador;

Further reiterating their willingness, also expressed in the Geneva Agreement, to submit in this matter to verification by the United Nations;

On the understanding that for the purpose of the present political agreement, "human rights" shall mean those rights recognized by the Salvadorian legal system, including treaties to which El Salvador is a party, and by the declarations and principles on human rights and humanitarian law adopted by the United Nations and the Organization of American States;

Have concluded the following agreement in pursuance of the initial objective of the Geneva Agreement:

1. All necessary steps and measures shall be taken immediately to avoid any act or practice which constitutes an attempt upon the life, integrity, security or freedom of the individual. Similarly, all necessary steps and measures shall be taken to eliminate any practice involving enforced disappearances and abductions. Priority shall be given to the investigation of any cases of this kind which may arise and to the identification and punishment of the persons found guilty.

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* It is the understanding of the Parties that this Agreement does not exhaust the consideration of the item on human rights and that it is, accordingly, a partial agreement. With the exception of points that are immediately applicable, the Agreement is subject to the package of political agreements to be negotiated for the achievement of the initial objective envisaged in the Geneva Agreement.

2. The full guarantee of the freedom and the integrity of the person requires that certain immediate measures be taken in order to ensure the following:

(a) No one may be arrested for the lawful exercise of his political rights;

(b) An arrest may be made only if ordered by the competent authority in writing and in accordance with the law, and the arrest must be carried out by officers who are properly identified as such;

(c) Anyone arrested must be informed while the arrest is being made of the reasons for the arrest and must be apprised without delay of the charge or charges against him;

(d) No one shall be placed under arrest as a means of intimidation. In particular, arrests shall not be made at night, except in the case of individuals caught in flagrante delicto;

(e) No one in custody shall be held incommunicado. Any person who has been arrested shall have the right to be assisted without delay by legal counsel of his own choosing and the right to communicate freely and privately with such counsel;

(f) No one shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

3. In the course of the present negotiations, appropriate legal procedures and timetables shall be determined for the release of individuals who have been imprisoned for political reasons.

4. The fullest possible support shall be given to ensuring the effectiveness of the remedies of amparo and habeas corpus. To this end, the broadest possible publicity shall be given to this Agreement among the public at large and, in particular, among authorities or officers in charge of detention centres. Anyone who hampers the operation of these remedies or provides false information to the judicial authorities shall be punished.

5. The right of all persons to associate freely with others for ideological, religious, political, economic, labour, social, cultural, sporting or other purposes shall be fully guaranteed. Trade union freedom shall be fully respected.

6. Freedom of expression and of the press, the right of reply and the activities of the press shall be fully guaranteed.

7. Displaced persons and returnees shall be provided with the identity documents required by law and shall be guaranteed freedom of movement. They shall also be guaranteed the freedom to carry on their economic activities and to exercise their political and social rights within the framework of the country's institutions.

8. All persons shall be guaranteed freedom of movement in the areas involved in conflict, and the necessary steps shall be taken to provide the inhabitants of such areas with the identity documents required by law.

9. The Parties recognize the necessity of guaranteeing the effective enjoyment of labour rights. This subject will be considered under the agenda item on economic and social problems.

II. INTERNATIONAL VERIFICATION

10. In accordance with the provisions of the Geneva Agreement and the agenda for the negotiations which was adopted in Caracas, the Parties hereby agree to the terms of reference for the United Nations human rights verification mission (hereinafter referred to as "the Mission"), as set out below.

11. The Mission shall devote special attention to the observance of the rights to life, to the integrity and security of the person, to due process of law, to personal liberty, to freedom of expression and to freedom of association.

In this context, a special effort shall be made to clarify any situation which appears to reveal the systematic practice of human rights violations and, in such cases, to recommend appropriate measures for the elimination of the practice to the Party concerned. The foregoing shall be without prejudice to any powers granted to the Mission to consider individual cases.

12. A Director designated by the Secretary-General of the United Nations shall be in charge of the Mission. The Director shall work in close cooperation with existing human rights organizations and bodies in El Salvador. He shall also be assisted by expert advisers. In addition, the Mission shall include as many verification personnel as may be necessary.

13. The purpose of the Mission shall be to investigate the human rights situation in El Salvador as regards acts committed or situations existing as from the date of its establishment and to take any steps it deems appropriate to promote and defend such rights. Accordingly, it shall perform its functions with a view to promoting respect for human rights and their guarantee in El Salvador and helping to do away with those situations in which such respect and guarantees are not duly observed.

14. The Mission's mandate shall include the following powers:

(a) To verify the observance of human rights in El Salvador;

(b) To receive communications from any individual, group of individuals or body in El Salvador, containing reports of human rights violations;

(c) To visit any place or establishment freely and without prior notice;

(d) To hold its meetings freely anywhere in the national territory;

(e) To interview freely and privately any individual, group of individuals or members of bodies or institutions;

(f) To collect by any means it deems appropriate such information as it considers relevant;

(g) To make recommendations to the Parties on the basis of any conclusions it has reached with respect to cases or situations it may have been called upon to consider;

(h) To offer its support to the judicial authorities of El Salvador in order to help improve the judicial procedures for the protection of human rights and increase respect for the rules of due process of law;

(i) To consult the Attorney-General of the Republic;

(j) To plan and carry out an educational and informational campaign on human rights and on the functions of the Mission itself;

(k) To use the media to the extent useful for the fulfilment of its mandate;

(l) To report regularly to the Secretary-General of the United Nations and through him to the General Assembly.

15. The Parties undertake to give their full support to the Mission. To that end, they pledge:

(a) To grant the Mission whatever facilities it may require for the performance of its functions;

(b) To ensure the security of the members of the Mission and of such persons as may have provided it with information, testimony or evidence of any kind;

(c) To provide, as expeditiously as possible, whatever information may be required by the Mission;

(d) To give their earliest consideration to any recommendations made to them by the Mission;

(e) Not to hinder the fulfilment of the Mission's mandate.

16. Each of the Parties shall appoint a delegate to serve as liaison with the Mission.

17. Should the Mission receive communications referring to acts or situations which occurred prior to its establishment, it may transmit them, if it deems it appropriate, to the competent authorities.

18. The fact that a case or situation has been considered by the Mission shall not preclude the application thereto of international procedures for the promotion and protection of human rights.

19. Subject to any arrangements which must be made prior to its establishment, the Mission shall take up its duties as of the cessation of the armed conflict. The Mission shall be established initially for one year and may be renewed.

San José, 26 July 1990

For the Government of El Savador:

(Signed): Oscar Alfredo SANTAMARIA

Colonel Juan A. MARTINEZ VARELA

Colonel Mauricio Ernesto VARGAS

Abelardo TORRES

David ESCOBAR GALINDO

Rafael Hernán CONTRERAS

For the Frente Farabundo Martí para la Liberación Nacional:

(Signed): Commander Schafik HANDAL

Commander Eduardo SANCHO

Ana Guadalupe MARTINEZ

Salvador SAMAYOA

Dagoberto GUTIERREZ

Marta VALLADARES

Roberto CAÑAS

(Signed): Alvaro de SOTO
Representative of the Secretary-General
of the United Nations